

A composite image of space featuring Earth, a satellite, a comet, the Moon, Mars, and Jupiter.

21st Annual High-Tech Conference

NASA Small Business Round Table Legal, Legislative and Policy Update

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- Delex protested terms of a delivery order proposal request issued by the Navy for general aviation training products
 - Contended the task order should be set-aside for small businesses rather than unrestricted
- 8 Oct 2008 GAO issued a decision regarding small business set-aside applicability of FAR 19.502-2(b) to task orders and delivery orders
- GAO stated the “Rule of Two” applies to task orders:
 - Task orders must be set-aside for small businesses when there is reasonable expectation that it will receive offers from more than one small business and when award can be made at a fair and reasonable price.



- International Program Group Inc., a HUBZone small Business, protested USMC's decision to have a SDVOSB set-aside.
 - CO considered HUBZone, 8(a), SDVOSB Programs and agency's progress towards meeting its contracting goals
 - Based the lowest goal achievement for SDVOSBs, CO issued SDVOSB set-aside
- 19 Sep 2008, GAO issued a decision regarding order of precedence of HUBZone and SDVOSB set-asides



GAO Decision:

- HUBZone set-aside is mandatory (shall) when enumerated conditions are met
 - Two or more HUBZone offers are expected
 - Award can be made at fair and reasonable price
- CO has discretion for SDVOSB set-aside (may) when conditions are met
 - Two or more HUBZone offers are expected
 - Award can be made at fair and reasonable price
- SBA appealed decision, asserting CFR 13.607 provides parity except HUBZone set-aside must be considered before a small business set-aside
- October 24, GAO denied appeal, citing unambiguous language of the applicable statutes





Rothe Decision

- Decided November 4th by Court of Appeals for the Federal Circuit
- Declared 10 USC 2323 facially unconstitutional and enjoined its application.
- 10 USC 2323 (Applies to DoD, NASA, Coast Guard)
 - Creates a 5% goal for SDB's
 - Authorizes 10% Price Evaluation Adjustment (FAR Subpart 19.11)
 - Requires evaluation of subcontracting plans to meet 10 USC 2323
- NASA uses Price Evaluation Adjustment
- NASA evaluates subcontracting plan to meet goals per 15 USC 644



Woman-Owned Small Business Update

- Comment Period has been extended
 - Original period 1 -31 Oct 2008
 - New period now until 13 March 2009
- Period was extended to incorporate comments from the *Rothe* Decision
- Seeking comments on:
 - CCR data set used by RAND to determine which NAICS were underrepresented
 - Non-public survey of Business Owners data set from the Economic Census







White House Memo

- Memo by White House Chief of Staff, Rahm Emanuel, dated 20 Jan 09
- No Proposed or Final Regulations to Federal Register until it has been reviewed by the Department or Agency Head
- Withdraw from OFR all that have not been published
- Extend the effective date 60 days with exceptions
- This does not apply to statutory or judicial deadlines
- Notify Office of Information and Regulatory Affairs (OIRA) of the Office of Management and Budget (OMB) of any issues

